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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM

1968

NO. 1254

STRACHAN SHIPPING COMPANY AND
TEXAS EMPLOYERS' INSURANCE ASSOCIATION
Petitioners

v.

R. J. SHEA, DEPUTY COMMISSIONER OF
LABOR AND LESTER NEHRING
Respondents

BRIEF FOR THE RESPONDENT LESTER NEHRING IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the courts below correctly refuse to apply the doctrine of collateral estoppel to respondent Nehring's claim for compensation tried by the deputy commissioner under the Longshoremen's and Harbor Workers' Compensation Act where Nehring had previously in a claim based upon the same alleged injuries failed to secure a favorable jury finding on the issue of injury in a third party action against the vessel owner tried under the Federal Rules of Civil Procedure? The same general question is presented in No. 1239, October Term, 1968, styled Young & Co., et al vs. R. J. Shea, Deputy Commissioner, et al.

2. Does the petitioners asserted constitutional question of due process exist in this case?

STATUTES AND RULES INVOLVED

The statutes and rules involved are as follows: Rule 43, 49, 59, and 60, Federal Rules of Civil Procedure, 33 U.S.C. 914(a)(b)(c)(d), 919(a)(c), 922, 929, 930 and 5 U.S.C. 556 set out in appendix.

STATEMENT

Respondent Nehring in general adopts the statement of the case as made by the deputy commissioner, but to this would add that the third party action by Nehring was tried under the Federal

Rules of Civil Procedure, in which trial the admissible evidence was determined by Rule 43, Federal Rules of Civil Procedure, pages 5a thru 7a, appendix; whereas this cause for compensation was tried in an administrative hearing before the deputy commissioner under the Longshoremen's and Harbor Workers' Compensation Act under the provisions of 33 U.S.C. 919, page 12a, appendix. The deputy commissioner was directed to make such investigation as he considered necessary in respect to his claim for compensation. The jury was not directed nor authorized to make an investigation into the facts. Petitioners, following Respondent Nehring's report of injury to petitioners, voluntarily assumed the furnishing of medical attention by hospitalizing him on such occasion and on two or three other occasions and provided lumbar disc surgery and under the provisions of 33 U.S.C. 919(c), supra, voluntarily paid to respondent Nehring compensation under the Longshoremen's and Harbor Workers' Compensation Act without the deputy commissioner's intervention and the issuance of a formal order finding that the respondent had sustained the injury or that he was entitled to compensation, medical attention, etc., which payment of compensation continued until approximately two (2) weeks before the trial of the third party action. Following the trial of the third party action respondent Nehring filed motion for new trial as permitted by Rule 59, Federal Rules of Civil Procedure, page 1a, appendix; thereafter gave notice of intention to

appeal to the Fifty Circuit Court of Appeals and following an adverse decision, has filed petition for writ of certiorari in cause no. 1311, October Term, 1968, styled Lester Nehring vs. Empresa Lineas Maritimas Argentinas vs. Strachan Shipping Company raising certain questions concerning the trial of the third party action. While the response in this case is not predicated upon the petition being granted and reversal had, nevertheless, it is presumed that in such event the questions raised herein by petitioners would become moot.

ARGUMENT

Respondent Nehring contends that the case was correctly decided below; he expressly adopts the argument of the deputy commissioner and attempts to avoid repeating anything that was said by the deputy commissioner in his brief. With respect to each of the questions, makes certain additional argument as set forth herein.

Question No. 1

The procedural rules under which the two different proceedings were tried are different and the fact finders were respectively changed under law with different duties and obligations as to essentially the same facts; so that there is no conflict between the jury verdict whereby respondent Nehring failed to convince the jury by a pre-

ponderance of the evidence that he had sustained the injury alleged and the affirmative finding of such injury by the deputy commissioner. (A conflict would have existed if the doctrine of collateral estoppel were applicable to this case.) The cases where the doctrine of collateral estoppel applies, has been applied by the courts in order to bring the litigation to an end; it has been cases where the burden of proof and the procedural rules under which the different proceedings were tried would presumably lead to the same result but where the rules involved in the two different proceedings require different burdens then in these cases the doctrine of collateral estoppel has no place. In the trial of the third party action where the Federal Rules of Civil Procedure were applicable, the jury had nor has no power to make an investigation into the merits of the case tried before it, but only to decide the issues based upon the evidence admitted to it under Rule 43, Federal Rules of Civil Procedure, supra, under the rulings of the court with the case being submitted to it under Rule 49, Federal Rules of Civil Procedure, page 8a, appendix. In the event a party is aggrieved by the finding by the jury before he can obtain relief from such verdict he must secure relief under the provisions of Rule 59 and 60 of the Federal Rules of Civil Procedure, pages 1a thru 4a, appendix. These rules among other things provide for relief upon excusable neglect, etc. These rules impose a substantially greater burden

on Nehring than is imposed by law applicable before the deputy commissioner. The burden that the respondent Nehring had to carry before the jury to obtain a favorable finding or to secure a new trial was substantially greater than the burden imposed upon the respondent Nehring in his claim initially or on rehearing for compensation under the Longshoremen's and Harbor Workers' Compensation Act. Under the Longshoremen's and Harbor Workers' Compensation Act 33 U.S.C. 919(c), supra, the deputy commissioner is directed by Congress to hold a hearing and to make such investigation into the facts as he deems necessary; whereas no doubt it would be reversible error for a jury to make an investigation into the facts. The deputy commissioner is directed by statute to make such an investigation. In other words, he can rely upon the evidence produced by the longshoreman himself or if he feels that the evidence as produced by the parties does not satisfactorily show the entire picture he may make the investigation so that his order reflects truthfully what the facts are. Further, under section 33 U.S.C. 922, page 13a, appendix, in the event that the longshoreman undergoes a change of condition, either for better or worse, or the deputy commissioner made a mistake of fact in entering the order entered - either for or against either party - that his order may in order correctly reflect the conditions as they actually exist and do substantial justice as between the

parties, he is authorized and directed upon either his own motion or upon the application of any party at interest to hold a new hearing and to enter an amended order as the case may be. This is contrary to every feature of the rule of res judicata and the narrow subdivision of collateral estoppel. Section 922, supra, of the act poses the continuing duty upon the deputy commissioner to determine that the facts as found by the deputy commissioner correctly reflects the facts as between the parties and that he performs substantial justice as between the parties. He may issue a new order finding injury having occurred as and when he found no injury had previously occurred and the fact that terminology used calls the order a new order or claim for compensation as distinguished from an application for a rehearing is of no consequence. See Banks vs. Chicago Grain Trimmers Association, 390 U.S. 459. The injured longshoreman merely by showing that a mistake of fact has occurred by reason of the previous compensation order may upon presentation of the facts to the deputy commissioner, obtain the entry of a proper order even though the injured longshoreman himself has induced the deputy commissioner to make a mistake of fact by failing to offer evidence at a previous hearing which he was aware of. See Stanfield vs. Lykes Bros. S.S. Co., Fifth Circuit, 124 F_2 999 1004. It is difficult to contemplate that under such a showing under the Federal Rules of Civil Procedure, Rule 60(b) that he

could obtain relief from a judgment tried before the jury by such a showing. So, no matter what words are used to describe the differences between the two hearings, without question, the burden upon the longshoreman is much less before the deputy commissioner than before the jury and if a mistake is made or a change of condition occurs before the deputy commissioner, either side may obtain prompt relief in a hearing before the deputy commissioner of labor; whereas the burden in obtaining relief from a judgment entered in the District Federal Court tried under the Federal Rules of Civil Procedure is much greater. This, coupled with the intent of section 922 of the Longshoremen's and Harbor Workers' Compensation Act indicates an intention on the part of Congress that the doctrine of res judicata and collateral estoppel does not apply and was not intended to apply in longshoremen's and harbor workers' compensation cases.

For a further argument upholding the order of the deputy commissioner if needed, it is pointed out that the exclusive jurisdiction to determine all matters relating to compensation which would include the matter of injury has been placed by Congress in the hands of the deputy commissioner under 33 U.S.C. 919(a), supra. If the petitioners view were to prevail, this most likely would work havoc in the operation of the administration of the Longshoremen's and Harbor Workers' Compensation Act by

the deputy commissioner insofar as the self executing part of the act is considered, 33 U.S.C. 914, page 10a, appendix. Under the statutory scheme unless the employer controverts the right to compensation under 33 U.S.C. 914(d), supra, he is required to commence payment of compensation on the 14th day after the employer has knowledge of the injury and to furnish medical care and attention without the intervention of the deputy commissioner in conducting a formal hearing and entering a formal order. In this case the employer and insurance carrier, petitioners herein, voluntarily furnished medical attention and hospital care including lumbar disc surgery and paid compensation for a period of more than three (3) years to wit: January 13, 1964 to February 12, 1967 when the compensation was terminated two (2) weeks before the third party action went to trial and at such a time when it was known by all parties hereto that the third party case was proceeding to trial and that it was too late for the respondent Nehring to secure a formal hearing (assuming that Nehring knew that the compensation was being terminated as of February 12, 1967, which he did not at that date; assuming further that the deputy commissioner could immediately give notice of a formal hearing and set a minimum time notice it is doubtful that he could, the deputy commissioner was required to give respondents ten days notice of a hearing, the hearing had to be had, the transcript prepared and then

the order entered, which for practical purposes was physically impossible to do prior to the time that the third party action proceeded to trial. Petitioners paid by way of compensation prior to February 12, 1967, $8,662.86 over and above the amount paid by reason of hospitalization, nursing and surgical fees.) With this background, the award of compensation was made on the presentation of evidence by respondent Nehring. Were longshoremen in general to be faced with the prospect of having the doctrine of collateral estoppel applied in cases of an adverse jury verdict on the issue of injury, the prudent handling of every longshoreman case where a third party action was involved would require, notwithstanding voluntary payment of compensation the furnishing of medical and hospital attention to the longshoreman, the longshoreman to make application for formal hearing before the deputy commissioner require the entry of a formal order establishing the injury as having occurred. This would materially and adversely affect the self executing phase of the Longshoremen's and Harbor Workers' Compensation Act because it would most likely result in the need of additional deputy commissioners and/or delay in the administration of providing remedies under the act. As a practical matter under the present arrangement the employer seldom controverts the occurrence of the injury before the deputy commissioner and usually commences the payment of compensation

without the deputy commissioners' intervention and if problems arise they are usually handled by the deputy commissioner by informal conference between the employer and the employee. The ease with which the compensation matters are at present handled by the deputy commissioner may very well be facilitated by the fact that the employer is under civil penalty to keep a record of all injuries to his employees, 33 U.S.C. 929, page 15a, appendix, and make a report of all injuries to his employees to the deputy commissioner, see 33 U.S.C. 930, page 16a, appendix (even though the report itself is declared by statute to be inadmissible in a formal hearing); nevertheless, should he deny the occurrence of the injury, his supervisory employees would certainly be available to be called to testify as to circumstances that they observed, what occurred, so that the deputy commissioner could definitely determine whether the alleged injury had or had not in fact occurred. Further, the physicians furnished by the employer who would have been in a position to have observed the effects of trauma upon his body so that would obviously exist after injury that is usually modified by the passage of time would be available as the managing agents of the employer to testify. So that for practical purposes this matter never becomes an issue in the ordinary handling of such matters before the deputy commissioner; whereas in third party action except in the most serious and obvious

injuries, both the employer and the vessel owner join together to attempt and collaberate to defeat the injured longshoreman's suit even to not following the spirit of the trial courts instructions. For an example, see Rogers vs. DeVries & Co., 236 FS 110. It is therefore submitted that under the applicable background of the Longshoremen's and Harbor Workers' Compensation Act, Section 922, the difference in the rules governing the hearings before the jury and deputy commissioner impose sufficiently different burdens upon the longshoreman to justify and require that the doctrine of collateral estoppel has no application to this case.

Question No. 2

Notwithstanding the claim of due process clause violation it is not thought to exist. First there was no disqualifying affidavit filed as to any alleged bias or prejudice of the deputy commissioner as required by the Administrative Procedures Act, see 5 U.S.C. 556, page 18a, appendix, if the deputy commissioner was thought to be biased or prejudiced.

However, the claim seems to be that the construction placed on the statute creates the basis of the violation of the due process clause and that the statute should be construed and applied without regard to accomplishing the beneficial effects intended to be accomplished by the Longshoremen's and

Harbor Workers' Compensation Act. In other words, the contention seems to be that due process requires mathematical certainty which is not required. See Gibbs vs. Burke, 69 S. Ct. 1247, 1249, 337 U.S. 775, 776 (dealing with the 14th amendment - due process clause which the courts have defined as having the same meaning as applied to the due process clause of the 5th amendment applying to federal cases). Petitioners ignore the fact that due process rather than meaning mathematical certainty means different things against different backgrounds, ".. Due process of law is secured against invasion by the federal government by the Fifth Amendment and is safeguarded against state action in identical words by the Fourteenth. The phrase formulates a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights. Its application is less a matter of rule. Asserted denial is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, fall short of such denial. In the application of such concept there is always the danger of falling into the habit of formulating the guarantee into a set of hard and fast rules the application of which in a given case may be to ignore the qualifying factors therein disclosed." See Betts v. Brady 316 U.S. 455, 462; 62 S. Ct. 1252, 1256, overruled on other

grounds by Gideon v. Wainwright 372 U.S. 335; 83 S. Ct. 792, but substantially followed as to the above quote.

The courts below have followed the dictates of this court in interpreting the Longshoremen's and Harbor Workers' Compensation Act in a liberal manner in order to accomplish the intended beneficial purposes as contemplated by the act. Tested against the principle that due process means different things against different backgrounds and is tested further against the principle that the Longshoremen's and Harbor Workers' Compensation Act is to be applied liberally in favor of the longshoreman in order to accomplish its beneficial intended purposes the case was clearly correctly decided below and there is no violation of petitioners due process rights under the Fifth Amendment. They were given every right to appear and to offer evidence, they sought to offer no evidence indicating that the respondent Nehring was not injured as he claimed to have been, but contended themselves with merely introducing the judgment into evidence. If, in fact, respondent's injury had not occurred as it was claimed to have occurred, certainly direct evidence from his fellow employees and petitioners physicians would have been available to at least make an issuable fact of non-injury. It was not produced. Certainly the deputy commissioner in carrying out his duties delegated by statute was under an obligation to see that sub-

stantial justice was rendered equally as between the parties. The fact that the deputy commissioner was directed to make an investigation to determine the facts if need be, and is further charged with the duty of administering the act so as to carry out its beneficial purposes, does not indicate any partiality on the part of the deputy commissioner.

WHEREFORE, premises considered, respondent Nehring prays that the petition for writ of certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two (2) copies of the foregoing Brief of Respondent Lester Nehring in Opposition to the petition have been served upon each of the following: Solicitor General, Department of Justice, Washington, D.C., 20530; Solicitor of Labor, Washington, D.C., 20530, each by depositing two (2) copies in a United States Post Office or mailbox addressed to their post office address, airmail, postage prepaid; and upon Mr. Anthony J.P. Farriss, United States Attorney, 515 Rusk Avenue, Houston, Texas 77002, counsel for respondent R.J. Shea, Deputy Commissioner; and Messrs. Sweeney J. Doehring, Ed Bluestein, Jr., and D. Dudley Oldham of Fulbright, Crooker, Freeman, Bates & Jaworski, Bank of the Southwest Building, Houston, Texas 77002 counsel for petitioners Strachan Shipping Company and Texas Employers' Insurance Association, by depositing in a United States Post Office or mailbox the same to each of them, United States mail, postage prepaid, properly addressed to their respective post office addresses this the 22 day of May, 1969.

(ORIGINAL SIGNED) W. JILES ROBERTS

W. JILES ROBERTS

APPENDIX

Federal Rules of Civil Procedure, Rule 59. New Trials; Amendment of Judgments

(a) Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

(b) Time for Motion. A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(c) Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

(d) On Initiative of Court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion. In either case, the court shall specify in the order the grounds therefor. As amended Feb. 28, 1966, eff. July 1, 1966.

(e) Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment. As amended Dec. 27, 1946, eff. March 19, 1948.

Federal Rules of Civil Procedure, Rule 60. Relief from Judgment or Order.

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any

other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. As amended Dec. 27, 1946, eff. March 19, 1948; Dec. 29, 1958, eff. Oct. 20, 1949.

Federal Rules of Civil Procedure, Rule 43. Evidence.

(a) Form and Admissibility. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these rules. All evidence shall be admitted which is admissible under the statutes of the United States, or under the rules of evidence heretofore applied in the courts of the United States on the hearing of suits in equity, or under the rules of evidence applied in the courts of general jurisdiction of the state in which the United States court is held. In any case, the statute or rule which favors the reception of the evidence governs and the evidence shall be presented according to the most convenient method prescribed in any of the statutes or rules to which reference is herein made. The competency of a witness to testify shall be determined in like manner.

(b) Scope of Examination and Cross-Examination. A party may interrogate any unwilling or hostile witness by leading questions. A party may call an adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the

adverse party only upon the subject matter of his examination in chief.

(c) Record of Excluded Evidence. In an action tried by a jury, if an objection to a question propounded to a witness is sustained by the court, the examining attorney may make a specific order of what he expects to prove by the answer of the witness. The court may require the offer to be made out of the hearing of the jury. The court may add such other or further statement as clearly shows the character of the evidence, the form in which it is offered, the objection made, and the ruling thereon. In actions tried without a jury the same procedure may be followed, except that the court upon request shall take and report the evidence in full, unless it clearly appears that the evidence is not admissible on any ground or that the witness is privileged.

(d) Affirmation in Lieu of Oath. Whenever under these rules an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

(e) Evidence on Motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

(f) Interpreters. The court may appoint an interpreter of its own selection and may fix his reasonable compensa-

tion. The compensation shall be paid out of funds provided by law or by one or more of the parties as the court may direct, and may be taxed ultimately as costs, in the discretion of the court. Added Feb. 28, 1966, eff. July 1, 1966.

Federal Rules of Civil Procedure, Rule 49. Special Verdicts and Interrogatories.

(a) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives his right to a trial by jury of the issue so omitted unless before the jury retires he demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as

may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict cr may order a new trial.

33 U.S.C. 914. Payment of Compensation.

(a) Compensation under this chapter shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(b) The first installment of compensation shall become due on the fourteenth day after the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter compensation shall be paid in installments, semimonthly, except where the deputy commissioner determines that payment in installments should be made monthly or at some other period.

(c) Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the deputy commissioner, in accordance with a form prescribed by the Secretary, that payment of compensation has begun or has been suspended, as the case may be.

(d) If the employer controverts the right to compensation he shall file with the deputy commissioner on or before the fourteenth day after he has knowledge of the alleged injury or death, a notice, in accordance with a form prescribed by the Secretary, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury

or death, and the grounds upon which the right to compensation is controverted.

Remaining portions of 33 U.S.C. 914 not pertinent to this case.

33 U.S.C. 919. Procedure in Respect of Claims.

(a) Subject to the provisions of section 913 of this title a claim for compensation may be filed with the deputy commissioner in accordance with regulations prescribed by the Secretary at any time after the first seven days of disability following any injury, or at any time after death, and the deputy commissioner shall have full power and authority to hear and determine all questions in respect of such claim.

(c) The deputy commissioner shall make or cause to be made such investigations as he considers necessary in respect to the claim, and upon application of any interested party shall order a hearing thereon. If a hearing on such claim is ordered the deputy commissioner shall give the claimant and other interested parties at least ten days' notice of such hearing, served personally upon the claimant and other interested parties or sent to such claimant and other interested parties by registered mail, and shall within twenty days after such hearing is had, by order, reject the claim or make an award in respect of the claim. If no hearing is ordered within twenty days after notice is given as provided in subdivision (b) of this section, the deputy commissioner shall, by order, reject the claim or make an award in respect of the claim.

33 U.S.C. 922. Modification of awards.

Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the deputy commissioner, the deputy commissioner may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in section 919 of this title, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury, and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such method as may be determined by the deputy commissioner with the approval of the Secretary. Mar. 4, 1927, c. 509, 22, 44 Stat. 1437; May 26, 1934, c. 354, 5, 48 Stat. 807; June 25, 1938, c. 685, 10, 52 Stat. 1167; 1946 Reorg. Plan No. 2, 3, eff. July 16, 1946, 11 F.R. 7873, 60

Stat. 1095; 1950 Reorg. Plan No. 19, 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271.

33 U.S.C. 929. Record of Injury or Death.

Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disease, other disability, or death in respect of such injury as the Secretary may by regulation require, and shall be available to inspection by the Secretary or by any State authority at such times and under such conditions as the Secretary may by regulation prescribe. Mar. 4, 1927, c. 509, 28, 44 Stat. 1438; 1946 Reorg. Plan No. 2, 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat 1095; 1950 Reorg. Plan No. 19, 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271.

33 U.S.C. 930. Reports.

(a) Within ten days from the date of any injury or death or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the Secretary a report setting forth (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day, and hour when and the particular locality where the injury or death occurred; and (5) such other information as the Secretary may require. A copy of such report shall be sent at the same time to the deputy commissioner in the compensation district in which the injury occurred.

(b) Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the Secretary and to such deputy commissioner at such times and in such manner as the Secretary may prescribe.

(c) Any report provided for in subdivision (a) or (b) of this section shall not be evidence of any fact stated in such report in any proceeding in respect of such injury or death on account of which the report is made.

(d) The mailing of any such report and copy in a stamped envelope, within the time prescribed in subdivisions (a) or (b) of this section, to the Secretary and deputy commissioner, respectively, shall be a compliance with this section.

(e) Any employer who fails or refuses to send any report required of him by this section shall be subject to a civil penalty not to exceed $500 for each such failure or refusal.

(f) Where the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge, of any injury or death of an employee and fails, neglects, or refuses to file report thereof as required by the provisions of subdivision (a) of this section, the limitations in subdivision (a) of section 913 of this title shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of either the employer or the carrier, until such report shall have been furnished as required by the provisions of subdivision (a) of this section. Mar. 4, 1927, c. 509, 30, 44 Stat. 1439; June 25, 1938, c. 685, 11, 52 Stat. 1167; 1946 Reorg. Plan No. 2, 3, eff. July 16, 1946, 11 F.R. 7873, 60 Stat. 1095; 1950 Reorg. Plan No. 19, 1, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1271.

5 U.S.C. 556. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision

..... On the filing in good faith of a timely and sufficient affidavit of personal bias or other disqualification of a presiding or participating employee, the agency shall determine the matter as a part of the record and decision in the case. .....